

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE EDMUND WILSON,

Defendant-Appellant.

UNPUBLISHED

May 10, 2011

No. 296693

Macomb Circuit Court

LC No. 2009-002637-FC

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of first-degree felony murder, MCL 750.316(1)(b), second-degree murder, MCL 750.317, assault with intent to do great bodily harm less than murder, MCL 750.84, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and two counts of unlawful imprisonment, MCL 750.349b. Defendant was sentenced to life in prison without parole for the felony murder conviction, 36 to 60 years in prison for the second-degree murder conviction, 5 to 15 years in prison for the false imprisonment convictions, 5 to 10 years in prison for the assault-with-intent conviction, and 5 years in prison for the felony-firearm conviction. We vacate defendant's convictions and sentences and remand for further proceedings.

On the first day of trial, prior to jury selection, defendant informed the circuit court that he and his attorney had experienced a breakdown in their relationship and that he wished to represent himself. After a very brief colloquy with defendant on the record, the circuit judge denied defendant's motion to represent himself, stating that he could "guarantee [defendant] a conviction to the max if you represent yourself." The circuit court did not otherwise make any findings or articulate any legal conclusions with regard to defendant's motion.

A criminal defendant's right to represent himself is implicitly guaranteed by the United States Constitution, US Const, Am VI, and explicitly guaranteed by the Michigan Constitution and Michigan statutory law, Const 1963, art 1, § 13; MCL 763.1. Several requirements must be met before a defendant may represent himself. First, the defendant's request to represent himself must be unequivocal. *People v Williams*, 470 Mich 634, 642; 683 NW2d 597 (2004). Second, the court must determine that the defendant's assertion of his right is knowing, intelligent, and voluntary. *Id.* Third, the court must determine that the defendant's self-representation would not disrupt, inconvenience, or burden the court. *Id.* In addition, the court must comply with MCR

6.005(D) by advising the defendant of the charge against him, the maximum possible prison sentence, any mandatory minimum sentence, and the risks of self-representation, and by offering defendant the opportunity to consult with an attorney. *Williams*, 470 Mich at 642-643. The circuit court's finding that a defendant's waiver of counsel is knowing and intelligent is reviewed for clear error, while the meaning of "knowing and intelligent" is reviewed de novo. *Id.* at 640.

The erroneous denial of a defendant's right to self-representation is a structural error requiring automatic reversal. *United States v Gonzales-Lopez*, 548 US 140, 148-150; 126 S Ct 2557; 165 L Ed 2d 409 (2006); see also *People v Duncan*, 462 Mich 47, 52; 610 NW2d 551 (2000). Because the erroneous refusal to allow a defendant to represent himself constitutes structural error, it is not amenable to harmless error analysis. *Gonzales-Lopez*, 548 US at 150; *McKaskle v Wiggins*, 465 US 168, 177-178 n 8; 104 S Ct 944; 79 L Ed 2d 122 (1984). As our Supreme Court has noted, "[s]tructural errors . . . are intrinsically harmful, without regard to their effect on the outcome, so as to require automatic reversal. Such an error necessarily renders unfair or unreliable the determining of guilt or innocence." *Duncan*, 462 Mich at 51 (citation omitted).

We vacate defendant's convictions and sentences and remand this case for further proceedings. Defendant unequivocally asserted his right to represent himself on the first day of trial. Yet the circuit court failed to engage in anything remotely akin to the searching inquiry required under *Williams* and MCR 6.005. The circuit court did not assess whether defendant's assertion of his right to self-representation was knowing, intelligent, and voluntary. Nor did the court consider on the record whether defendant's self-representation would disrupt or burden the court. The court did not even mention the requirements of *Williams* and MCR 6.005; nor did it advise defendant of the charges against him or offer defendant the opportunity to consult with an attorney at the time. Instead, the circuit judge merely observed that defendant was "not schooled on the proper way to ask a question in court" and remarked that he would not allow defendant to "tr[y] to examine [witnesses] without a law degree[.]" As noted earlier, the circuit judge also informed defendant that he could "guarantee [defendant] a conviction to the max if you represent yourself."

Defendant made clear to the circuit court that he wished to proceed to trial without counsel. Nevertheless, the circuit court summarily denied defendant's motion to represent himself without engaging in any meaningful dialogue on the record and without ever attempting to determine whether defendant understood the fundamental consequences of his choice. This summary denial of defendant's motion to represent himself constituted structural error. *Gonzales-Lopez*, 548 US at 150.¹

For the foregoing reasons, we vacate defendant's convictions and sentences and remand this case for further proceedings. Given our determination that the circuit court's erroneous

¹ We concede that there appears to be overwhelming evidence of defendant's guilt in this case. However, as explained previously, the erroneous denial of a defendant's right to self-representation is not amenable to harmless error analysis. *McKaskle*, 465 US at 177-178 n 8.

denial of defendant's right to self-representation requires automatic reversal, we need not consider the remaining arguments raised by defendant on appeal.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly